

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 85-0489-RGS

UNITED STATES OF AMERICA,

v.

METROPOLITAN DISTRICT COMMISSION, et al.,

CIVIL ACTION NO. 83-1614-RGS

CONSERVATION LAW FOUNDATION OF NEW ENGLAND, INC.,

v.

METROPOLITAN DISTRICT COMMISSION,

SCHEDULE SEVEN COMPLIANCE ORDER NUMBER 231

April 2, 2014

STEARNS, D.J.

This is the two hundred and thirty-first Compliance Order that has issued in this litigation. On March 14, 2014, the Massachusetts Water Resources Authority (MWRA) filed its Quarterly Compliance and Progress Report. Also submitted with the Compliance Report is the 2013 Annual Progress Report on the Combined Sewer Overflow Control Plan. The United States and the Conservation Law Foundation have each indicated that they decline to file a response.

I. Schedule Seven

No mandated activities were scheduled during the previous quarter on Schedule Seven.

II. CSO Annual Progress Report

The Combined Sewer Overflow (CSO) Progress Report for the calendar year 2013 summarizes the consistent progress that has been made towards completion of the master CSO control plan. In 2013, the MWRA and the affected communities installed 5.4 miles of new storm drain and sanitary sewer in Boston, Cambridge, and Brookline. The City of Cambridge completed the CAM004 stormwater outfall and detention basin in April of 2013 in compliance with Schedule Seven. As previously reported, on October 15, 2013, the Alewife Stormwater Wetland at CAM004, an ingenious marriage of aesthetics and bioscience, was dedicated in a ceremony attended by State and City officials, the court, and Executive Director Laskey. The Town of Brookline, as also previously reported, completed its sewer separation project in April of 2013, three months ahead of the Schedule Seven milestone. The Brookline project has been instrumental in lowering CSO discharges from the MWRA's Cottage Farm facility. Another project completed by the MWRA well ahead of schedule is the

interceptor connection and floatables control at Outfall SOM01A, upgrading the connection from the Tannery Brook Conduit to the MWRA's interceptor system. As noted in the Report, this brings 32 of the 35 construction projects in the long-term CSO control plan to fruition.¹

III. Quarterly Progress Report

A. Combined Sewer Overflow Program

1. CAM004 Sewer Separation

This important and complex project is the keystone of the Alewife Brook CSO control plan. The MWRA reports that the City of Cambridge is making progress despite severe winter weather delays on the three contracts that comprise the remaining work on the CAM004 project. The \$16.3 million Contract 8A, which involves the separation of combined sewers in a 68-acre area in the vicinity of Fresh Pond and Brattle Street, is now 70 percent complete. Subsurface work is virtually complete on all streets in the Contract 8A area, although sewer and storm drain installations in Larch Road have yet to begin. Utility coordination and relocations have not

¹ This progress is reflected in the decrease of the MWRA's capital expenditures on the CSO program from an annual high of \$128.1 million in 2008 to \$26.3 million in 2013.

interfered with the prospects of a timely completion of Contract 8A in December of 2014.

The \$30 million Contract 8B, which involves the separation of combined sewers in an 83-acre area east of the Contract 8A area and bordered by Concord Avenue and Brattle Street is now 10 percent complete. Winter weather and utility coordination (particularly gas main relocations) have slowed progress and may impact the scheduled completion date.

The City of Cambridge issued the notice to proceed on the \$24.2 million Contract 9 on February 11, 2014. Contract 9 entails the installation of 19,640 linear feet of new sanitary sewers and storm drains; 4,070 linear feet of trenchless pipe rehabilitation; 10,360 linear feet of ductile water main pipe; and 800 linear feet of 20-inch water pipe trenchless rehabilitation in Concord Avenue; all in a 60-acre area north of Contracts 8A and 8B bounded by Fresh Pond Parkway and Concord and Huron Avenues. Construction is scheduled to be completed in December of 2015.² Cambridge closed

² The MWRA reports that some progress has been made in obtaining entry rights from the owner of Concord Lane (a private way) for site surveys, utility investigations, soil and groundwater testing, and ultimately construction. Should negotiations between the City and the property owner's attorneys fail, the MWRA intends to assert its

the bidding in early December of 2013, and, as previously noted, will break ground on the project in January of 2014. Completion of Contract 9 is slated for December of 2015, in compliance with Schedule Seven. The closing of CAM004, it should be noted, will complete the closing of the 34 outfalls (of 84 total) contemplated by the Long-Term Control Plan.³

The MWRA reports that previously reported cost and schedule concerns related to the limited in-state landfill space available for CAM004 soil disposal remain, although two new in-state landfills have recently opened and a third is in the process of coming on line.

2. Control Gate and Floatables Control at Outfall MWR003 and MWRA Rindge Avenue Siphon Relief

The MWRA reports that it continues to make progress with the design of the construction contract for this project, which will upgrade the overflow hydraulic capacity at Outfall MWR003 (Alewife Brook). The objective is to provide system relief in extreme storm events permitting the closure of CAM004 and lowering overall discharges into Alewife Brook. The design also recommends

legal authority to make entry on the property to ensure that work is completed on Contract 9.

³ Three additional outfalls over and above the 34 contemplated in the Plan have also been closed.

replacing the 30-inch pipe of the Rindge Avenue Siphon with a 48-inch pipe, replacing the static weir at Outfall MWR003 with an automated gate, and installing an underflow baffle.

The MWRA is reviewing the completed design plans and construction specifications and will put the contract out for bid in May of this year. The MWRA will shortly submit a notice of intent to the Cambridge Conservation Commission (CCC) for a wetlands order of conditions and an application for a construction permit for work in the Alewife Brook Reservation to the Massachusetts Department of Conservation and Recreation (DCR). The MWRA continues to coordinate with NStar and Verizon for the provision of the electric power and data communications necessary to operate the automated weir gate at MWR003. There are also minor issues with the Massachusetts Bay Transportation Authority and a private landowner over access to a critical sewer manhole at Alewife Station, but these are expected to be resolved.

The MWRA reports that the City of Cambridge has expressed concern about the potential impact of the work at MWR003 on wastewater level of service in the area and has requested the opportunity to investigate design modifications. While the MWRA

has not objected in principle, it has made clear to the City of Cambridge that it must advertise the bids in May and issue the notice to proceed with construction in August of 2014, as Schedule Seven requires.

3. Reserved Channel Sewer Separation

The MWRA reports that the Boston Water and Sewer Commission (BWSC) has completed four of the nine contracts that comprise the \$65.1 million Reserved Channel sewer separation project. The \$11.9 million Contract 3B (which involves sewer separation in a 66-acre area of South Boston), is now 90 percent complete. The \$10 million Contract 4 (which involves sewer separation in a 182-acre area adjacent to outfalls BOS076, BOS078, and BOS079) is now 75 percent complete.⁴ The MWRA notes that Contract 3B remains on schedule for completion in October of 2014, and Contract 4 is on schedule for substantial completion in August of 2015.

The MWRA additionally reports that the \$6.8 million Contract 8 (pavement restoration) remains at 35 percent complete; that the

⁴ The BWSC completed the installation of drains and sewers on I Street between East Broadway and East Fourth Street and drains on K Street between East Third Street and East Broadway, among other accomplishments.

BWSC awarded the \$4.8 million Contract 5 (cleaning and lining of existing sewers) on February 24, 2014; and that the BWSC awarded Contract 6 (downspout disconnections) on January 29, 2014. The MWRA expects that all work on the Reserved Channel Sewer Separation project will be completed by December of 2015, in compliance with Schedule Seven.⁵

III. Comments

The court notes with pleasure the continued progress on all projects during the past quarter, as well as during the whole of calendar year 2013, in which all five of the Schedule Seven milestones were met. In this regard, the court recommends a reading of the 2013 Annual Progress Report for a full sense of the accomplishments of the long-term CSO control plan, or at a minimum, a good look at Figure 2 of the Report, which shows in graphic form the reduction in annual system-wide CSO overflow volume from 3.3 billion gallons in 1988 to .5 billion gallons (88 percent of which is treated) today. Also worth examining are Figures 11-15, which display the dramatic improvements over time in water quality in the Lower Charles River,

⁵ As previously reported, the BWSC has requested approval to expand the sewer separation infrastructure into certain streets within the Reserved Channel Sewer Separation area in order to increase inflow removal. The MWRA is still in the process of reviewing the request.

the Mystic River, the Neponset River, the Inner Harbor, and the Beaches of South Boston.⁶

ORDER

The parties are ordered to report to the court as previously scheduled.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

⁶ With the completion of the storage tunnel in 2011, the number of days on which sampling showed a violation of the bacteria standard at one or more beaches in South Boston plummeted from a seasonal average of 17 in 2008-2010 to just 3 in 2013.